

SENATE BILL

No. 3

Introduced by Senator Ducheny

October 27, 2009

An act to amend Sections 60640 and 60643 of the Education Code, relating to pupil assessments.

LEGISLATIVE COUNSEL'S DIGEST

SB 3, as introduced, Ducheny. Pupil assessments.

(1) Existing law establishes the Standardized Testing and Reporting Program, known as the STAR Program. Existing law requires each school district, charter school, and county office of education to administer a standards-based achievement test, known as the California Standards Tests, to all pupils in grades 2 to 11, inclusive. Existing law authorizes a school district to administer a 2nd test in the pupil's primary language to pupils with limited English proficiency who receive instruction in their primary language or have been enrolled in a school in the United States for less than 12 months. Existing law makes these provisions inoperative on July 1, 2011.

This bill would instead require pupils with limited English proficiency who receive instruction in their primary language or have been enrolled in a school in the United States for less than 3 consecutive years to take a 2nd achievement test in their primary language, thereby imposing a state-mandated local program. The bill would extend the operative date of these provisions to July 1, 2015. The bill would require the State Department of Education, by January 1, 2011, to modify the California Standards Tests in order to eliminate linguistic complexity, to the extent practicable. The bill would require school districts to provide specified

accommodations to pupils who are English learners while taking these tests, thereby imposing a state-mandated local program.

(2) Existing law requires test publishers who wish to be considered for eligibility for the development of the California Standards Tests to adhere to specified requirements, including that the test publisher provide valid and reliable aggregate scores to school districts and county boards of education in specified forms and formats. Existing law makes these provisions inoperative on July 1, 2011.

This bill would additionally require these test publishers to provide valid and reliable aggregate scores to school districts and county boards of education in a format that would show, for pupils who are English learners, their program of instruction, time in the program of instruction, and their English proficiency level as determined by the California English Language Development Test. The bill would extend the operative date of these provisions to July 1, 2015.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) The federal No Child Left Behind Act of 2001 (20 U.S.C.
- 4 Sec. 6301 et seq.) requires states to test all pupils in a valid and
- 5 reliable manner and requires, to the extent practicable, that pupils
- 6 with limited English proficiency be tested in the language and
- 7 form most likely to yield accurate data on academic subject areas.
- 8 (2) Approximately one of every four pupils enrolled in
- 9 California's public schools is identified as a pupil with limited
- 10 English proficiency.
- 11 (3) The current academic assessment system does not allow
- 12 pupils with limited English proficiency to show academic ability
- 13 in academic subject areas.

(4) Exclusive reliance on academic assessments designed for native English speakers to gauge the academic progress of pupils with limited English proficiency violates standards for educational testing established by recognized national educational institutions, including the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.

(5) Valid and reliable academic assessment data is critical to the education accountability system.

(6) An accountability system that would yield more accurate data on the academic ability of pupils with limited English proficiency is needed.

(7) Local educational agencies should not experience negative consequences solely based on the scores of recent immigrant pupils on tests that do not provide valid and reliable diagnostic information about what these pupils know and can do in academic subject areas.

(b) It is therefore the intent of the Legislature to bring the system of assessing the academic progress of pupils with limited English proficiency into alignment with the requirements of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), including the requirement that states test all pupils in a valid and reliable manner and, to the extent practicable, in the language and form most likely to yield accurate data on academic ability in academic subject areas. It is also the intent of the Legislature that California's state assessments be valid and reliable assessments for pupils who are English learners and for pupils with developmental disabilities and that the provision of accommodations enable their participation in these state assessments pursuant to the core assurances of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

SEC. 2. Section 60640 of the Education Code is amended to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) From the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 2 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5. The state board shall establish a testing period to provide that all

1 schools administer these tests to pupils at approximately the same
2 time during the instructional year, except as necessary to ensure
3 test security and to meet the final filing date.

4 (c) The publisher and the school district shall provide two
5 makeup days for the testing of previously absent pupils within the
6 testing period established by the state board in subdivision (b).

7 (d) The governing board of the school district may administer
8 achievement tests in grades other than those required by
9 subdivision (b) as it deems appropriate.

10 (e) Pursuant to Section 1412(a)(17) of Title 20 of the United
11 States Code, individuals with exceptional needs, as defined in
12 Section 56026, shall be included in the testing requirement of
13 subdivision (b) with appropriate accommodations in administration,
14 where necessary, and those individuals with exceptional needs
15 who are unable to participate in the testing, even with
16 accommodations, shall be given an alternate assessment.

17 (f) (1) ~~At the option of the school district, pupils~~ Pupils with
18 limited English proficiency who are enrolled in any of grades 2 to
19 11, inclusive, ~~may~~ shall take a second achievement test in their
20 primary language. Primary language tests administered pursuant
21 to this subdivision and subdivision (g) shall be subject to the
22 requirements of subdivision (a) of Section 60641. These primary
23 language tests shall produce individual pupil scores that are valid
24 and reliable.

25 (2) Notwithstanding any other law, the state board shall
26 designate for use, as part of this program, a single primary language
27 test in each language for which a test is available for grades 2 to
28 11, inclusive, pursuant to the process used for designation of the
29 assessment chosen in the 1997–98 fiscal year, as specified in
30 Section 60643, as applicable.

31 (3) *The primary language assessments developed pursuant to*
32 *this section shall be developed to satisfy all the requirements of*
33 *the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301*
34 *et seq.), including the requirements regarding validity, reliability,*
35 *and comparability. The testing contractor chosen for the purpose*
36 *of developing the primary language assessments shall report to*
37 *the state board as to how these requirements have been met.*

38 (4) *The primary language assessments administered pursuant*
39 *to this subdivision and subdivision (g) are subject to the*
40 *requirements of subdivision (a) of Section 60641.*

1 (5) *The department, by January 1, 2011, shall modify the*
2 *achievement test administered pursuant to Section 60642.5 in*
3 *order to eliminate linguistic complexity, to the extent practicable.*
4 *The modifications shall be based upon research designed to*
5 *maintain the rigor of the test but also to enable a pupil who is an*
6 *English learner to better understand test directions and questions.*

7 (6) *In administering the achievement test that is administered*
8 *pursuant to Section 60642.5, school districts shall provide the*
9 *following accommodations to pupils who are English learners:*

10 (A) *The use of a bilingual dictionary.*

11 (B) *The explanation of test questions and repetition of test*
12 *directions at the request of a pupil.*

13 (C) *The use of a scribe to translate a response from the primary*
14 *language to English.*

15 (D) *The allowing of oral responses by pupils, so long as the*
16 *responses are translated into English for the purpose of*
17 *standardized scoring.*

18 ~~(3)~~

19 (7) (A) *The department shall use funds made available pursuant*
20 *to Title VI of the federal No Child Left Behind Act of 2001 (20*
21 *U.S.C. Sec. 6301 et seq.) and appropriated by the annual Budget*
22 *Act for the purpose of developing and adopting primary language*
23 *assessments that are aligned to the state academic content*
24 *standards. Subject to the availability of funds, primary language*
25 *assessments shall be developed and adopted for reading/language*
26 *arts and mathematics in the dominant primary language of*
27 *limited-English-proficient pupils. The dominant primary language*
28 *shall be determined by the count in the annual language census of*
29 *the primary language of each limited-English-proficient pupil*
30 *enrolled in the California public schools.*

31 (B) *Once a dominant primary language assessment is available*
32 *for use for a specific grade level, it shall be administered in place*
33 *of the assessment designated pursuant to paragraph (1) for that*
34 *grade level.*

35 (C) *In choosing a contractor to develop a primary language*
36 *assessment the state board shall consider the criteria for choosing*
37 *a contractor or test publisher as specified by Section 60643, and*
38 *as specified by Section 60642.5, as applicable. The contractor*
39 *shall have expertise and experience in developing primary*
40 *language test items.*

1 (D) Subject to the availability of funds, the assessments shall
2 be developed in grade order starting with the lowest grade subject
3 to the STAR Program.

4 (E) If the state board contracts for the development of primary
5 language assessments or test items to augment an existing
6 assessment, the state shall retain ownership rights to the assessment
7 and the test items. With the approval of the state board, the
8 department may license the test for use in other states subject to a
9 compensation agreement approved by the Department of Finance.

10 ~~(F) On or before January 1, 2006, the department shall submit~~
11 ~~to the Legislature a report on the development and implementation~~
12 ~~of the initial primary language assessments and recommendations~~
13 ~~on the development and implementation of future assessments and~~
14 ~~funding requirements.~~

15 (g) A pupil identified as limited English proficient pursuant to
16 the administration of a test made available pursuant to Section
17 60810 who is enrolled in any of grades 2 to 11, inclusive, and who
18 either receives instruction in his or her primary language or has
19 been enrolled in a school in the United States for less than ~~12~~
20 ~~months~~ *three consecutive years* shall be required to take a test in
21 his or her primary language if a test is available.

22 (h) *Public schools providing dual immersion programs may use*
23 *the primary language assessments pursuant to this section for the*
24 *purpose of assessing pupils who are enrolled in dual immersion*
25 *programs and who are nonlimited English proficient, as defined*
26 *in Section 60643. This assessment shall be accomplished at the*
27 *school district's expense, and only if the school district enters into*
28 *an agreement for that purpose with the state testing contractor.*

29 (i) *The results of a primary language assessment shall be used*
30 *to determine adequate yearly progress pursuant to the federal No*
31 *Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).*
32 *However, for pupils to whom the high school exit examination is*
33 *administered, the high school exit exam shall be used to determine*
34 *adequate yearly progress rather than as an achievement test*
35 *administered pursuant to this section. The results of the high school*
36 *exit exam shall be in addition to the results of the assessment in*
37 *English.*

38 (j) *The results of a primary language assessment shall also be*
39 *used for purposes of the Academic Performance Index. The*
40 *department shall perform an analysis in order to determine how*

1 *to use the results of the primary language assessment in calculating*
2 *API score growth from the previous year. In the years after the*
3 *first year of administration of a test pursuant to this section, growth*
4 *in API score shall be determined using the year-to-year results of*
5 *the test administered pursuant to this section.*

6 ~~(h)~~

7 (k) (1) The Superintendent shall apportion funds to school
8 districts to enable school districts to meet the requirements of
9 subdivisions (b), (e), (f), and (g).

10 (2) The state board annually shall establish the amount of
11 funding to be apportioned to school districts for each test
12 administered and annually shall establish the amount that each
13 publisher shall be paid for each test administered under the
14 agreements required pursuant to Section 60643. The amounts to
15 be paid to the publishers shall be determined by considering the
16 cost estimates submitted by each publisher each September and
17 the amount included in the annual Budget Act, and by making
18 allowance for the estimated costs to school districts for compliance
19 with the requirements of subdivisions (b), (e), (f), and (g).

20 (3) An adjustment to the amount of funding to be apportioned
21 per test shall not be valid without the approval of the Director of
22 Finance. A request for approval of an adjustment to the amount
23 of funding to be apportioned per test shall be submitted in writing
24 to the Director of Finance and the chairpersons of the fiscal
25 committees of both houses of the Legislature with accompanying
26 material justifying the proposed adjustment. The Director of
27 Finance is authorized to approve only those adjustments related
28 to activities required by statute. The Director of Finance shall
29 approve or disapprove the amount within 30 days of receipt of the
30 request and shall notify the chairpersons of the fiscal committees
31 of both houses of the Legislature of the decision.

32 ~~(i)~~

33 (l) For purposes of making the computations required by Section
34 8 of Article XVI of the California Constitution, the appropriation
35 for the apportionments made pursuant to paragraph (1) of
36 subdivision (h), and the payments made to the publishers under
37 the contracts required pursuant to Section 60643 or subparagraph
38 (C) of paragraph (1) of subdivision (a) of Section 60605 between
39 the department and the contractor, are "General Fund revenues
40 appropriated for school districts," as defined in subdivision (c) of

1 Section 41202, for the applicable fiscal year, and included within
2 the “total allocations to school districts and community college
3 districts from General Fund proceeds of taxes appropriated pursuant
4 to Article XIII B,” as defined in subdivision (e) of Section 41202,
5 for that fiscal year.

6 ~~(j)~~

7 (m) As a condition to for receiving an apportionment pursuant
8 to subdivision (h), a school district shall report to the
9 Superintendent all of the following:

10 (1) The number of pupils enrolled in the school district in grades
11 2 to 11, inclusive.

12 (2) The number of pupils to whom an achievement test was
13 administered in grades 2 to 11, inclusive, in the school district.

14 (3) The number of pupils in paragraph (1) who were exempted
15 from the test at the request of their parents or guardians.

16 (4) *The number of pupils to whom a primary language*
17 *assessment was administered in grades 2 to 11, inclusive, in the*
18 *school district.*

19 ~~(k)~~

20 (n) The Superintendent and the state board are authorized and
21 encouraged to assist postsecondary educational institutions to use
22 the assessment results of the California Standards Tests, including,
23 but not limited to, the augmented California Standards Tests, for
24 academic credit, placement, or admissions processes.

25 ~~(t)~~

26 (o) The Superintendent, with the approval of the state board,
27 annually shall release to the public test items from the
28 standards-based achievement tests pursuant to Section 60642.5
29 administered in previous years. The minimum number of test items
30 released per year shall be equal to 25 percent of the total number
31 of test items on the test administered in the previous year.

32 ~~(m)~~

33 (p) This section shall become inoperative on July 1, 2014 2015.

34 SEC. 3. Section 60643 of the Education Code is amended to
35 read:

36 60643. (a) To be eligible for consideration under Section
37 60642.5 by the state board, test publishers shall agree in writing
38 each year to meet the following requirements, as applicable, if
39 selected:

(1) Enter into an agreement, pursuant to subdivision (e) or (f), with the department by October 15 of that year.

(2) Align the standards-based achievement test provided for in Section 60642.5 to the academically rigorous content and performance standards adopted by the state board.

(3) Comply with subdivisions (c) and (d) of Section 60645.

(4) Provide valid and reliable individual pupil scores to parents or guardians, teachers, and school administrators.

(5) Provide valid and reliable aggregate scores to school districts and county boards of education in all of the following forms and formats:

(A) Grade level.

(B) School level.

(C) District level.

(D) Countywide.

(E) Statewide.

(F) Comparison of statewide scores relative to other states.

(G) *For pupils who are English learners, their program of instruction, time in the program of instruction, and their English proficiency level as determined by the California English Language Development Test.*

(6) Provide disaggregated scores, based on limited-English-proficient status and nonlimited-English-proficient status. For purposes of this section, pupils with “nonlimited-English-proficient status” shall include the total of those pupils who are English-only pupils, fluent-English-proficient pupils, and redesignated fluent-English-proficient pupils. These scores shall be provided to school districts and county boards of education in the same forms and formats listed in paragraph (5).

(7) Provide disaggregated scores by pupil gender and ethnicity, and provide disaggregated scores based on whether pupils are economically disadvantaged or not. These disaggregated scores shall be in the same forms and formats as listed in paragraph (5). In any one year, the disaggregation shall entail information already being collected by school districts, county offices of education, or charter schools.

(8) Provide disaggregated scores for pupils who have individualized education programs and have enrolled in special education, to the extent required by federal law. These scores shall be provided in the same forms and formats listed in paragraph (5).

1 This section shall not be construed to exclude the scores of special
2 education pupils from any state or federal accountability system.

3 (9) Provide information listed in paragraphs (5), (6), (7), and
4 (8) to the department and the state board in the medium requested
5 by each entity, respectively.

6 (b) It is the intent of the Legislature that the publisher work with
7 the Superintendent and the state board in developing a methodology
8 to disaggregate statewide scores as required in paragraphs (6) and
9 (7) of subdivision (a), and in determining which variable indicated
10 on the STAR testing document shall serve as a proxy for
11 “economically disadvantaged” status pursuant to paragraph (7) of
12 subdivision (a).

13 (c) Access to information about individual pupils or their
14 families shall be granted to the publisher only for purposes of
15 correctly associating test results with the pupils who produced
16 those results or for reporting and disaggregating test results as
17 required by this section. School districts are prohibited from
18 excluding a pupil from the test if a parent or parents decline to
19 disclose income. This chapter does not abridge or deny rights to
20 confidentiality contained in the federal Family Educational Rights
21 and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) or other applicable
22 state and federal law that protect the confidentiality of information
23 collected by educational institutions.

24 (d) Notwithstanding any other law, the publisher of the
25 standards-based achievement test provided for in Section 60642.5
26 or any contractor under subdivision (f) shall comply with all of
27 the conditions and requirements enumerated in subdivision (a), as
28 applicable, to the satisfaction of the state board.

29 (e) (1) A publisher shall not provide a test described in Section
30 60642.5 or 60650 or in subdivision (f) of Section 60640 for use
31 in California public schools, unless the publisher enters into a
32 written contract with the department as set forth in this subdivision.

33 (2) The department shall develop, and the state board shall
34 approve, a contract to be entered into with a publisher pursuant to
35 paragraph (1). The department may develop the contract through
36 negotiations with the publisher.

37 (3) For purposes of the contracts authorized pursuant to this
38 subdivision, the department is exempt from the requirements of
39 Part 2 (commencing with Section 10100) of Division 2 of the
40 Public Contract Code and from the requirements of Article 6

(commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(4) The contracts shall include provisions for progress payments to the publisher for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the amount budgeted for each separate and distinct component task provided for in each contract shall be withheld pending final completion of all component tasks by that publisher. The total amount withheld pending final completion shall not exceed 10 percent of the total contract price.

(5) The contracts shall require liquidated damages to be paid by the publisher in the amount of up to 10 percent of the total cost of the contract for any component task that the publisher through its own fault or that of its subcontractors fails to substantially perform by the date specified in the agreement.

(6) The contracts shall establish the process and criteria by which the successful completion of each component task shall be recommended by the department and approved by the state board.

(7) The publishers shall submit, as part of the contract negotiation process, a proposed budget and invoice schedule, that includes a detailed listing of the costs for each component task and the expected date of the invoice for each completed component task.

(8) The contracts shall specify the following component tasks, as applicable, that are separate and distinct:

(A) Development of new tests or test items as required by paragraph (2) of subdivision (a).

(B) Test materials production or publication.

(C) Delivery of test materials to school districts.

(D) Test processing, scoring, and analyses.

(E) Reporting of test results to the school districts, including, but not limited to, all reports specified in this section.

(F) Reporting of test results to the department, including, but not limited to, the electronic files required pursuant to this section.

(G) All other analyses or reports required by the Superintendent to meet the requirements of state and federal law and set forth in the agreement.

(9) The contracts shall specify the specific reports and data files, if any, that are to be provided to school districts by the publisher and the number of copies of each report or file to be provided.

1 (10) The contracts shall specify the means by which any delivery
2 date for materials to each school district shall be verified by the
3 publisher and the school district.

4 (11) School districts may negotiate a separate agreement with
5 the publisher for any additional materials or services not within
6 the contracts specified in this subdivision, including, but not limited
7 to, the administration of the tests to pupils in grade levels other
8 than grades 2 to 11, inclusive. Any separate agreement is not within
9 the scope of the contract specified in this subdivision.

10 (f) The department, with approval of the state board, may enter
11 into a separate contract for the development or administration of
12 a test authorized pursuant to this part, including, but not limited
13 to, item development, coordination of tests, assemblage of tests
14 or test items, scoring, or reporting. The liquidated damages
15 provision set forth in paragraph (5) of subdivision (e) shall apply
16 to a contract entered into pursuant to this subdivision.

17 (g) This section shall become inoperative on July 1, ~~2011~~ 2015.

18 SEC. 4. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.